

**Before the
Federal Communications Commission
Washington, D. C. 20554**

FCC 07M-51

06722

In the Matter of)	EB Docket No. 07-197	MAILED
)		
Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business before the Federal Communications Commission)	File No. EB-06-IH-5037 FRN: 0007179054	NOV 27 2007
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Resellers of Telecommunications Services)	NAL/Acct. No. 200732080029	
)		
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MEMORANDUM OPINION AND ORDER

Background

Issued: November 19, 2007

Released: November 20, 2007

Petition to Intervene as a Party of the National Association of State Utility Consumer Advocates ("NASUCA") was filed on October 10, 2007. An Opposition was filed by Kurtis J. Kintzel, Keanan Kintzel, *et al* ("Kintzels") on October 16, 2007. NASUCA filed a Reply on October 29, 2007.

The first Prehearing Conference was conducted on November 15, 2007, at which arguments were heard from NASUCA and the Kintzels. The question of intervention by NASUCA is now ripe for decision.

Scope of Participation

NASUCA is a voluntary association whose members are designated by states to represent utility consumers before state and federal regulators and in the courts. NASUCA *is also* on the lookout to protect consumers "from entities who continually flout the law and regulations designed to protect consumers." Members of NASUCA have initiated state proceedings against Kintzel entities for deceptive sales practice, unauthorized abandonments, and violations of state orders. In this case, NASUCA would seek to add an issue regarding the role of an underlying carrier in a Kintzel entity's abandonment of operations, and an issue on the measure that carrier change verification rules have on consumers.

Analysis

NASUCA seeks intervention not as a matter of right, but as a matter of discretion. In order to succeed, NASUCA must show its interest in this proceeding, must show how its

participation will assist the Commission in the determination of the issues set under the *Order to Show Cause*, and must set forth its proposed issues. The Presiding Judge has discretion to grant or deny NASCUA's petition, or to grant intervention limited to a particular stage of the proceeding 47 C.F.R. §1.223(b).

NASUCA has failed to show an expertise or ability to prosecute that is not also possessed by the Enforcement Bureau. To permit NASCUA full intervention would impose added burdens and costs on the Kintzels to litigate eleven issues against two prosecutors, each having rights to request answers to interrogatories, demand relevant documents, and to participate with Enforcement Bureau counsel in deposing the Kintzels. Also, at hearing, NARUC's counsel would have rights of cross examination and introducing evidence as a "second team" to Bureau counsel. It would be time consuming to allow NASUCA's participation in the rough and tumble of litigation. In exercising discretion to allow or deny intervention, the Presiding Judge has the obligation to "regulate the course of the hearing" in a manner that is fair and not unnecessarily burdensome to any party. *Cf.* 47 C.F.R. §1.243(f)(j). NASUCA has failed to convince the Presiding Judge that as a party it would be able to significantly assist in the determination of the eleven issues and has failed to show how its proposed issues are appropriate to litigate in this forum. In addition, litigation of NASUCA's proposed issues could confuse the record. Therefore, intervention as a party would not be appropriate.

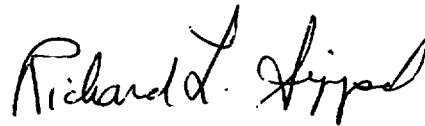
However, in view of the apparent knowledge of Kintzel's operations, and the experience of NASUCA as a consumer representative, it would be appropriate to receive Amicus Comments on proposed findings and conclusions at the close of the evidentiary phase of the proceeding. As discussed at the Prehearing Conference, NASUCA may also bring to the attention of Bureau counsel evidence for the Bureau's consideration that NASUCA has discovered in its consumer protection activities.

Rulings

According, IT IS ORDERED that Petition to Intervene filed by NASUCA IS DENIED.

IT IS FURTHER ORDERED that NASUCA may file Amicus Comments to Proposed Findings of Fact and Conclusions of Law within 10 days of their filing.¹

FEDERAL COMMUNICATIONS COMMISSION²

A handwritten signature in black ink, appearing to read "Richard L. Sippel". The signature is fluid and cursive, with a large initial 'R' and 'S'.

Richard L. Sippel
Chief Administrative Law Judge

¹ If NASUCA files Amicus Comments, an appropriate extension of additional time for Reply briefs will be afforded the parties. Comments may not exceed 25 pages in length, and NASUCA shall have no right of reply.

² Courtesy copies of this *Order* are being e:mailed to each counsel of record on the date of issuance.